

REMARKS

1. In response to the Office Action mailed September 8, 2009, Applicants respectfully request reconsideration. Claims 1-4, 6-14, 17-23, and 26-29 were last presented for examination. In the outstanding Office Action, claims 1-4, 6-14, 17-23, and 26-29 were rejected. By the foregoing Amendments, claims 1, 3-4, 6, 9-11, and 26 have been amended. Claim 2 has been cancelled, and claim 30 has been added. Upon entry of this paper, claims 1, 3-4, 6-14, 17-23 and 26-30 will be pending in this application. Of these twenty-four (24) claims, one (1) claim (claim 1) is independent.

2. Based upon the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered and withdrawn.

Drawings

3. Applicants note that the Examiner has not checked the boxes on form PTOL-326 either accepting or objecting to Applicants' drawings submitted on February 9, 2005. Applicants respectfully request that the Examiner indicate acceptance of these drawings in the next Office Action.

Claim Rejections under §102

4. Claims 1-4, 6-14, 18-23, 26 and 28 are rejected under 35 U.S.C. 102(a) and (e) as allegedly being anticipated by U.S. Patent No. 6,730,015 to Schugt et al. (hereinafter, "Schugt"). Applicants do not acquiesce to the Examiner's apparent assertion that Schugt qualifies as a reference under 35 U.S.C. 102(a). However, Applicants do not find it necessary to address this matter further at this time, as the Examiner has also rejected the aforementioned claims over Schugt under 35 U.S.C. 102(e). Applicants respectfully request reconsideration and withdrawal of these rejections for at least the following reasons.

5. As amended, Applicants' independent claim 1 recites as follows:

1. A medical implant configured to be implanted at least partially within a well formed in an outer surface of a skull bone of a recipient, the implant comprising:

a low profile hermetically sealed housing having at least one pliable flange extending outwardly therefrom, wherein the housing has a length and width that are substantially greater than a thickness between an upper and lower surface of the housing, wherein the housing defines a plane configured to match a plane of the outer surface of the skull bone in which the medical implant is configured to be implanted, wherein when the lower surface of the housing is positioned within the well, the at least one flange is bendable by hand so that at least a portion of the at least one flange fits substantially flush against the surface of the bone adjacent the well and is securable to the bone." (See, Applicant's amended claim 1, above).

6. Applicants respectfully submit that Schugt does not disclose the combination of limitations of Applicants' amended claim 1. As previously noted by Applicants, Schugt discloses a flexible element 20 connected at its first end 24 to a connection 32 which is attached to transducer 30. (See, Schugt, col. 6, lns. 26-28.) Flexible element 20 is connected at its second end 22 to a mounting plate 26 which is mounted to a base, such as the mastoid cavity. (See, Schugt, col. 6, lns. 28-34.) Once mounting plate 26 is attached to the base, flexible element 20 and mounting plate 26 support transducer 30 in the middle ear space of the recipient while glue used to adhere transducer 30 to the ossicle cures. (See, Schugt, col. 6, lns. 36-47; col. 7, lns. 12-15.) After the glue cures, flexible element 20 is either removed altogether, or when flexible element 20 is made of a biocompatible metal, left inside the recipient. (See, Schugt, col. 6, lns. 43-60.) Schugt also discloses malleable legs 34 attached to the lower surface of transducer 30, which may bent to conform to and anchor transducer 30 to the floor of the mastoid cavity via an adhesive. (See, Schugt, col. 6, lns. 60-65; and FIG. 2). Additionally, Schugt discloses a lead 36 attached to transducer 30. (See, Schugt, col. 7, lns. 10-11, 18-19.)

7. Because the transducer of Schugt is described as being inserted wholly within the mastoid cavity, the transducer 30 would not be subject to the concerns that arise with devices configured to be attached to the outer surface of a patient's skull, such as impacts to the head or causing a noticeable protuberance. The transducer 30 of Schugt is thus not low profile. Rather, Schugt

illustrates transducer 30 as having a rectangular cuboid shape with a thickness approximately equal to its width. (See, Schugt, FIGs. 1-3.) The transducer 30 of Schugt, thus, does not have a low profile housing with “a length and width that are substantially greater than a thickness between an upper and lower surface of the housing,” as recited by Applicants’ amended claim 1. Moreover this rectangular cuboid shape of the transducer 30 of Schugt does not “define a plane configured to match a plane of the outer surface of the skull bone in which the medical implant is configured to be implanted,” as recited in Applicants’ amended claim 1.

8. Moreover, as noted above, the legs 34 of Schugt are attached to the lower surface of the transducer 34 such that the legs are adhered to the floor of the mastoid cavity. Thus, the legs 34 of Schugt are configured to be adhered to the bone within the cavity, and are not to “[fit] substantially flush against the surface of the bone adjacent the well,” as recited in Applicants’ amended claim 1.

9. Applicants therefore respectfully submit that, for at least the above discussed reasons, Schugt does not anticipate or render obvious the combination of limitations of Applicants’ amended claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection for at least these reasons.

Dependent claims

10. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Conclusion

11. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

12. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the

patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

Electronic signature: /Michael G. Verga/
Michael G. Verga
Registration No.: 39,410
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant